89-495

Supreme Court, U.S.
FILED
SEP 20 1989
JOSEPH F. SPANIOL, JR.
CLERK

NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1989

JULIET BAIRD ALEXANDER, PETITIONER

V.

MASSACHUSETTS LABOR RELATIONS COMMISSION,

RESPONDENT

PETITION FOR A WRIT OF CERTIORARI TO THE MASSACHUSETTS SUPREME JUDICIAL COURT

JULIET BAIRD ALEXANDER
132 MASSAPOAG AVENUE
SHARON, MASSACHUSETTS 02067
617-784-3806 - PRO SE

JOHN B. COCHRAN, CHIEF COUNSEL
LABOR RELATIONS COMMISSION
100 CAMBRIDGE STREET, ROOM 1604
BOSTON, MASSACHUSETTS 02202
617-727-3505

SEPTEMBER 25, 1989

25pp

QUESTIONS PRESENTED

1. Are the federal rights of trial court reporters under the Fair Labor Standards Act extinguished by the Trial Court's administration and application of Massachusetts General Law Chapter 221, Section 88?
2. Is the Massachusetts Labor Relations Commission's decision to dismiss without a hearing a legal oxymoron, in conflict with itself and the decisions of this Court and other courts?
3. Did the Massachusetts Supreme Judicial Court abuse its discretion by establishing a standard for burden of proof that is repugnant to the 14th Amendment of the United States Constitution?

LIST OF PARTIES

The parties to the proceedings below were the petitioner, Juliet Baird Alexander, and the respondent, Massachusetts Labor Relations Commission.

The respondent before this Court is the Massachusetts Labor Relations Commission.

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IN THE SUPREME COURT OF THE

UNITED STATES

OCTOBER TERM, 1989

JULIET BAIRD ALEXANDER, PETITIONER

V.

MASSACHUSETTS LABOR RELATIONS

COMMISSION, RESPONDENT

PETITION FOR A WRIT OF

CERTIORARI TO THE

MASSACHUSETTS SUPREME JUDICIAL COURT

The petitioner, Juliet Baird Alexander, respectfully prays that a writ of certiorari issue to review the judgement and opinion of the Massachusetts Supreme Judicial Court, entered in the above-entitled proceeding on April 27, 1989.

OPINIONS BELOW

The opinion of the Massachusetts Supreme Judicial Court is reprinted in the appendix hereto, p. 1A, infra.

The decision after reconsideration of the Massachusetts Labor Relations Commission is reprinted in the appendix hereto p.15 A, infra.

The decision of the Massachusetts Labor Relations Commission is reprinted in the appendix hereto, p. 5A, infra.

JURISDICTION

The decision of the Massachusetts Labor Relations Commission was entered on January 25, 1988; its decision on reconsideration entered on April 4, 1988. The Supreme Judicial Court of Massachusetts entered its judgement affirming the Commission's decision on April 27, 1989. On July 27, 1989, Justice Brennan signed an order extending the time for filing this petition for certiorari to and including September 25, 1989. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257 (2) (3).

STATUTES INVOLVED

MASSACHUSETTS GENERAL LAW

CHAPTER 221, SECTION 88

Upon request of the presiding justice or any party, the stenographer shall furnish a transcript of his notes, or any part thereof, taken at a trial or hearing, for which he shall be paid by the party requesting it at the rate of fifty cents a hundred words for one copy and twenty cents a hundred words for each additional copy ordered at the same time. In the event that daily copy is ordered by the presiding justice or any party, the rate for the original copy shall be seventy-five cents a hundred words and thirty cents a hundred words for each additional copy. If a transcript is ordered by the presiding justice or, in a criminal case, by the district attorney, payment therefore at the same rate shall be made by the Commonwealth upon a voucher

approved by him, and, in a criminal case, the charges of transcripts furnished to said justice and to the district attorney shall be taxed like other expenses.

FAIR LABOR STANDARDS 29 USCS § 207

207. Maximum hours

(a)(1) Except as otherwise provided in this section, no employer shall employ any of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, for a workweek longer than forty hours unless such employee received compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

(2) No employer shall employ any of his employees who in any workweek is engaged in commerce or in the production of goods

for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, and who in such workweek is brought within the purview of this subsection by the amendments made to this Act (29 USCS 201-216, 217-219) by the Fair Labor Standards Amendments of 1966 (29 USCS 203, 206, 207, 213, 214, 216, 218) --

(A) for a workweek longer than forty-four hours during the first year from the effective date of the Fair Labor Standards Amendments of 1966 (Feb. 1, 1967),

(B) for a workweek longer than forty-two hours during the second year from such date, or

(C) for a workweek longer than forty hours after the expiration of the second year from such date,

unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than

one and one-half times the regular rate at which he is employed.

MASSACHUSETTS GENERAL LAW

CHAPTER 150E

SECTION 11 (IN PERTINENT PART)

150E:11. Proceedings on Complaint Charging Commission with Prohibited Act; Hearing; Orders; Review; Superior Court to Enforce.

Section 11. When a complaint is made to the commission that a practice prohibited by section ten has been committed, the commission may issue an order dismissing the complaint or may order a further investigation or a hearing thereon. The commission may dismiss a complaint without a hearing if it finds no probable cause to believe that a violation of this chapter has occurred or if it otherwise determines that further proceedings would not effectuate the purposes of this chapter.

STATEMENT OF CASE

Petitioner is a court reporter employee of the Massachusetts Trial Court and a member of the bargaining unit of O.P.E.I.U. local 6. In August 1987, petitioner brought complaints before the Massachusetts Labor Relations Commission charging unlawful breach of the employment contract by the employer; failure to police the outstanding agreement by the employer-dominated union; and intimidation coercion and interference by a union agent with the exercise by employees of rights guaranteed under MGL Chapter 150E.

Notwithstanding the Labor Relations Commission's failure to address in their decision the question presented for review, the issue of federally protected overtime and the employer's illegal treatment of reporters with respect to overtime served as the underpinnings of the entire complaint.

This federal question was fairly and repeatedly raised during the entire course of proceedings. The theory of petitioner's complaint was forcefully outlined in her pro-se presentation to the hearing officer, to wit; in assessing the impact of computers, the importance of the employment status of reporters cannot be overlooked. Petitioner asserted that the contract provides that they are employees doing the work of the employer, protected, under Garcia v. San Antonio, by the provisions of FSLA and, therefore, the payment of a statutorily based page rate in lieu of overtime benefits is a violation of federal law; it was further asserted that the provision of $25,000 computers to certain employees which eliminates their overtime and still pays them a page rate is a contract violation of the grossest kind.

In considering the employer's

position that reporters are independent contractors when producing transcripts, the violation of the existing contract takes on an even more grotesque dimension. The employer's provision of high speed $25,000 equipment to certain reporters enabling them to produce court-ordered transcripts, on court premises, on court owned equipment, during the 37 1/2 hours of their salaried work week, and to pocket the statutory page rate for every page produced in such a fashion, proved two things:

1. That reporters are employees and independent contractors at one and the same time.

2. That the payment of a statutory page rate was obviously never intended by the employer to compensate reporters for overtime spent producing transcripts, but functions instead as an enlargement of the wage structure.

Petitioner argued to the Commission that this untenable situation arose thanks to three interrelated factors: An employer-dominated union that allowed the employer to deal directly with employees who were not representative of the rank and file in matters of wages and hours; an employer more interested in efficiency than fairness; a rank and file that was deliberately kept in the dark with respect to their federally protected rights.

Despite petitioner's request, a stenographic record was not permitted to be made of the preliminary hearing before the Labor Relations Commission. (See appendix page 19A, infra) Although there is no transcript, the record contains uncontroverted physical evidence of the following facts:

1. The provisions of FSLA with respect to reporters were operative as of April 15, 1986. (See appendix page 27A)

2. The employer exercised dominion and control over reporters' transcript production. (See appendix pages 28A, 29A, 30A)

3. Reporters spend onerous hours in excess of their 37 1/2 hour work week producing transcripts for the employer. (See appendix pages 33A, 35A)

4. The union qua union had no knowledge of either the effect of computers on reporters' mandatory overtime or the ultimate grant of computers to its members. (See appendix pages 30A, 31A, 32A, 38A)

5. The M.S.C.R.A. functioned as the employer's exclusive representative without legal authority and under conditions dominated and controlled by the employer. (See appendix pages 30A, 31A, 32A, 37A, 38A)

On January 25, 1988, the Labor Relations Commission issued a decision to dismiss petitioner's charges without a hearing. Although it declined to pass upon the federal question of FSLA mandated

overtime and its ramifications viz à viz the issue of high speed computer equipment, three findings in its decision require emphasis.

1. The employer made a unilateral change in the existing contract when it gave computer equipment to employees. (See appendix page 12A)

2. The union did not protest the change. (See appendix page 12A)

3. The MSCRA is not an agent of the union. (See appendix page 7A)

On February 3, 1988, petitioner requested reconsideration, citing "the Commission's failure to perceive and frame the essential and uncontroverted evidence introduced by the complaining party."

On April 4, 1988, the Commission issued a letter of reconsideration again dismissing the charges.

On April 25, 1988, petitioner took an appeal to the Massachusetts Appeals Court

pursuant to MGL Chapter 150E:11. While the focus of the appeal was the incompetence and plain error of the Commission's decision, based on a review of the entire record, the federal question of FSLA conflict was brought to the Court's attention with a fair precision in the statement of proceedings, located in the record appendix, in the statement of facts and in the body of the brief. (See appendix pages 35A,36A. Appellate brief pp.4,5,6,18)

On November 17, 1988, the Massachusetts Supreme Judicial Court, on its own motion took the case from the Appeals Court. In oral argument heard February 6, 1989, the printed text provided to that Court, petitioner brought the federal question to the Court's attention again when she asked the Court to affirm that reporters were employees when producing transcripts and to compel the payment of overtime benefits unjustly

denied.

On April 27, 1989, the Supreme Judicial Court affirmed the decision of the Commission ruling that petitioner had the burden of establishing that a prohibited practice had occurred.

REASONS FOR GRANTING THE WRIT

I

Under the employer's application of MGL Chapter 22, Section 88, the rights of employee reporters to overtime compensation as guaranteed by the Fair Labor Standards Act are irrevocably foreclosed. They must labor in the judicial vineyard, producing thousands of pages of transcript at night, at home, on weekends and holidays, for a statutory page rate that, as of May, 1988, had not changed in a decade. Produce or face the prospect of being removed from the payroll. This prevents the reporter from enjoying the benefits and protection of

his contract and, minimally, allows the employer to avoid the requirements of record keeping of wages and hours.

The Fair Labor Standards Act is sufficient to meet the demands of the reporter's predicament: "One who employs persons without conforming to the prescribed wage and hour conditions is warned that he may be subject to the criminal penalties of the Act." No more is required . . . .

United States v. Darby

312 U.S. 100 61 Sup. Ct., 451, (1941)

II

The Labor Relations Commission's decision to dismiss without a hearing constitutes an important step in the vaporization of constitutionally protected contract rights of public employees. The Labor Relations Commission is the only forum in which a public employee may bring a complaint of unfair labor practice

against his union. Procedural due process requires that the matter be resolved by a competent tribunal and in a manner consistent with essential fairness.

When, as in this case, a Commission in its rash and intemperate zeal to maintain the status quo finds the existence of per se unfair labor practice and in the same breath dismisses the charge for lack of evidence; when, as in this case, a Commission invents evidence by which it explains away a union's inexcusable negligence as lawful waiver, the public employee is dismayed by the folly and worse of its judgement, his confidence in the ability of his employment contract to protect him is destroyed.

Federal law is plainly frustrated by the distorted fact finding and intellectual pandemonium evident in the Labor Relations Commission's decision.

The statutory prohibitions to an employer's unilateral change in an existing contract and a union's abject failure to represent its members fairly and diligently, are the legislative acknowledgement of the great mischief that cannot but follow such practices. Then there is no compliance into which the unrepresented and disenfranchised employee may not be frightened.

III

The Massachusetts Supreme Judicial Court's ruling that the petitioner "had the burden of 'establishing' (emphasis provided) that a prohibited practice occurred," before she is entitled to a hearing unconstitutionally enlarges her burden of proof ex post facto, obviates the need for a Commission in the first instance and impairs, thereby, all public employees' federally protected rights to due process and equal protection of the

laws.

The public employee has a right to call for a clear statement of those perils which make it necessary that, although M.G.L. Chapter 150E, Section 11 provides for a threshold standard of "probable cause to believe," he must now secure his charge beyond doubt or dispute before the Commission will consider holding a hearing to investigate the matter.

This Byzantine requirement is singularly injudicious; it gives the state statute a construction incompatible with its plain purpose; and is, in its effects, very oppressive and vexatious to all working people.

CONCLUSION

The Trial Court's evasion of FSLA requirements, the Labor Relations Commission's exquisite triumph of bureaucratic angst over statutory obligation, and the Supreme Judicial

Court's imponderable idea that a charge has to be proven beyond doubt or dispute before it may be investigated provide a complete instance of how the best of men deceive themselves where their interests are concerned.

To be secure in the terms and conditions of his contract, the public employee must be assured of redress complete and thorough of any complaint alleging unfair labor practice.

It would be just as rational to give a frog or a rabbit, upon which the physician is about to experiment, an appeal to the zoological society as to provide contract redress for a state court employee in the form of a politically encumbered tribunal or an appeal to a panel of judges.

The employment contract of reporters in Massachusetts has become a bed of Procrustes, whereby their federally

protected rights may be stretched and summarily lopped off to fit the arbitrary measurement of an employer, a commission, or a high court.

Nothing can make it tolerable for a moment that public employees in Massachusetts, trial court reporters in particular, should be thus severed from their just expectations.

Accordingly, petitioner respectfully requests that her writ be granted and plenary consideration be given to the questions presented for review.

Juliet Baird Alexander
132 Massapoag Avenue
Sharon, Massachusetts 02067
617-784-3806 Pro Se
John B. Cochran, Chief Counsel
Labor Relations Commission
100 Cambridge Street, Room 1604
Boston, Massachusetts 02202
617-727-3505

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V.

MASSACHUSETTS LABOR RELATIONS COMMISSION,

RESPONDENT

PETITION FOR A WRIT OF CERTIORARI TO

THE MASSACHUSETTS SUPREME JUDICIAL COURT

APPENDIX

JULIET BAIRD ALEXANDER

132 MASSAPOAG AVENUE

SHARON, MASSACHUSETTS 02067

617-784-3806 PRO SE

JOHN B. COCHRAN, CHIEF COUNSEL

LABOR RELATIONS COMMISSION

100 CAMBRIDGE STREET, ROOM 1604

BOSTON, MASSACHUSETTS 02202

617-727-3505

SEPTEMBER 25, 1989

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S-4964 S.J.C.

JULIET BAIRD ALEXANDER

VS.

LABOR RELATIONS COMMISSION

April 27, 1989

Labor Relations Commission. Labor, Judicial review.

This is an appeal from a prehearing dismissal, after an investigation, by the Labor Relations Commission (commission) of consolidated charges filed by Juliet Baird Alexander alleging prohibited labor practices. The first charge was against her employer, the Chief Administrative Justice of the Trial Court (employer), alleging violations of G. L. c. 150E, & 10 (a) (1)-(5) (1986 ed.), through a unilateral change in workplace and conditions of employment by providing computer assisted transcription (CAT) equipment to some of the official court reporters in Plymouth County. The second

charge alleged violations of G. L. c. 150E, & 10 (b) (1)-(3) (1986 ed.), by Alexander's exclusive representative for collective bargaining, Office and Professional Employees International Union, AFL-CIO Local 6 (union), in failing to act fairly to represent Alexander and others over the issue of the CAT equipment installation. The commission held an investigation, pursuant to G. L. c. 150E, & 11, and 456 Code Mass. Regs. & 15.04 (1986), following which it decided not to issue a complaint, and notified the parties that it was dismissing the charges. On request by Alexander that it review its determination, the commission reconsidered and subsequently affirmed the dismissal. Alexander appealed and we transferred the case to this court on our own motion. We affirm the decision of the commission.

A prehearing dismissal is a "final

order" reviewable under G. L. c. 150E, & 11. Quincy City Hosp. v. Labor Relations Comm'n, 400 Mass. 745, 747 (1987). In our review of a prehearing dismissal, we are mindful that the commission has broad discretion under the statute to resolve complaints, id. at 748, and that the charging party has the burden before the commission of establishing that the prohibited practice occurred. Id. at 749. The record before us clearly supports the commission's determination that there was insufficient evidence to show either that the union breached its duty fairly to represent Alexander or that the employer violated c. 150E through installation of the CAT equipment. On a challenge of the commission's decision, the charging party must demonstrate that the commission's action was invalid. See Quincy City Hosp. v. Labor Relations Comm'n, supra at 749-750, and cases

cited. Alexander's allegations on appeal amount to a belabored reiteration of her arguments to the commission along with conclusory statements which, at most, question the weight and credibility of the evidence. We conclude that the commission acted within its discretion in dismissing the charges without a hearing.

Order of the Labor Relations Commission affirmed.

Juliet Baird Alexander, pro se.

John B. Cochran (Gene M. Switzer with him) for the defendant.

January 25, 1988

Ilene Robinson, Esq.
Office of the Chief Administrative
Justice
317 New Court House
Boston, MA 02108

Juliet Baird Alexander
132 Massapoag Avenue
Sharon, MA 02067

David Rome, Esq.
44 School Street
Boston, MA 02108

RE: SUP-3157 & SUPL-2414
Commonwealth of Massachusetts
Administrative Justice Trial
Courts/OPEIU L.6. and
Juliet B. Alexander

Dear Sir or Madam:

Please be advised that the Commission, Commissioners Maria C. Walsh and Elizabeth K. Boyer participating, decided to dismiss the charges filed in the captioned cases. The evidence adduced at the investigation indicates that the Employer decided unilaterally to implement a "pilot program" in approximately June, 1986, under which the Employer would provide Computer Assisted Transcription (CAT) equipment to stenotypists in certain courts, among them the Plymouth County Courthouse, in order to determine whether such equipment ought to be installed statewide. The evidence further indicated that, during the several months prior to June, 1986, the Employer, as well as certain subcommittees set up by the Union, were exploring the nature and feasibility of various CAT equipment for both

stenotypists and "voice" court reporters. The Union's steward during this time was Wayne Sawyer, a typist; during the months prior to June, 1987, Sawyer was actively involved in selecting and setting up the pilot program in the Plymouth County Courthouse. The Charging Party alleges that the Union's conduct harmed the Charging Party and thereby violated the Union's duty to fairly represent her. She asserts that the Union was influenced to act the way it did by Wayne Sawyer who, she alleges, had a personal pecuniary interest in this matter.

In March and May, 1986, the Massachusetts Superior Court Reporters Association (Association), an unofficial organization of bargaining unit members, but not an agent of the Union, voted against the implementation of any CAT equipment in the courts and advised the Employer in writing of their wishes.

Sawyer was present at both of these meetings. In June, 1987, the Association's Board of Directors discussed the pilot program and decided to send the Employer a letter, over Wayne Sawyer's signature, seeking more information on the pilot program. After the Employer responded, Sawyer sent another letter on behalf of the Association demanding, inter alia, "to be included in the decision-making process..." and to meet with the Employer "as soon as possible to resolve these problems."

The evidence further establishes that in early July, 1987, charging party Juliet Alexander, a voice reporter, became aware of the pilot CAT equipment being utilized by stenotypists in the court to which she was assigned. She confronted union steward Sawyer about this situation, since the court reporter had voted against implementing such equipment changes. In

the course of a heated discussion between Alexander and Sawyer, Sawyer offered Alexander grievance forms. However, Alexander chose not to pursue a grievance. After another confrontation with Sawyer a few days later, Alexander attempted unsuccessfully to reach the Union's business agent by telephone and eventually, on July 15, 1987, wrote the business agent a letter demanding that the Union file a prohibited practice charge against the Employer based on the implementation of the CAT equipment. The Union responded by letter dated July 30, 1987, stating that the pilot program in the Plymouth Courthouse was installed in response to a proposal of the stenotypist subcommittee of the Union, that the voice writers had an opportunity also to submit proposals for CAT equipment, and that "it does not appear that the voice writers have been deprived of benefits afforded to

stenotypists." Alexander than filed the instant charges with the Commission. Subsequently, at the Union's meeting in the fall of 1987, the Union decided it would demand to bargain with the Employer before any permanent CAT equipment is installed in the courts. The Union has set up a bargaining committee to deal with this issue.

The Charging Party contends that the Union has breached its duty of fair representation by discouraging her from grieving the installation of the CAT equipment and by failing to contest the Employer's unilateral implementation of the pilot program because of the Union steward's personal and pecuniary interest in having CAT equipment available for stenotypist court reporters. The evidence submitted at the investigation suggests that Sawyer accurately conveyed the court reporters' collective concerns to the

Employer and took no action to prevent the Employer's consideration of voice writer technology. Moreover, in view of the Union's decision to demand bargaining prior to the installation of any permanent CAT equipment, the Commission does not find probable cause to believe that Sawyer's personal interests have impeded the Union's conduct in protecting the interests of bargaining unit members, including voice writers such as Alexander. Alexander decided not to file a grievance, although offered an opportunity to do so by the Union; consequently, the evidence does not establish probable cause to believe that the Union has breached its duty to fairly represent Alexander in processing a grievance. Accordingly, the charges alleging violations of Section 10(b) (1) are dismissed.

Alexander also charges that the

Employer has violated Sections 10(a) (1) (2) (3) (4) and (5) of the Law by, in sum, conspiring with Sawyer (and thereby with the Union) to implement CAT equipment to benefit stenotypists but not voice writers, by discriminating against voice writers in their terms and conditions of employment, and by unilaterally altering the working conditions of unit members. Although the Employer may have unilaterally changed its employees' working conditions by introducing a pilot program, the Union has not protested the change insofar as it relates to the "pilot program." A union may lawfully decide to permit a change in working conditions as long as its conduct is not arbitrary, unlawfully motivated or inexcusably negligent. Since the evidence is insufficient to establish probable cause to believe that the Union's decision not to challenge the pilot program was taken

in bad faith or otherwise violative of its duty of fairness representation, Alexander has no standing to assert the Employer's refusal to bargain in this respect. We find insufficient evidence to conclude that the Employer conspired with the Union to circumvent the wishes of the majority of court reporters or that the Employer otherwise interfered with or dominated the Union or discriminated against any employees because of their union activity. Accordingly, the charges alleging violations of Sections 10(a) (1) (2) (3) (4) and (5) are dismissed. Based upon the reasons stated above, the Commission declines to proceed to complaint in these cases and the charges are dismissed.

Very truly yours,

LABOR RELATIONS COMMISSION

Ann Moriarty

Executive Secretary

AM/ppw

The charging party may, within seven (7) days of receipt of this notice, seek a review of this determination by the Commission, pursuant to MLRC Rules 456 CMR 15.04(3). The request shall contain a complete statement setting forth the facts and reasons upon which such request is based. The charging party shall serve a copy of the request on the opposing party or its counsel, if any.

April 4, 1988

Ilene Robinson, Esq.
Office of the Chief Administrative
Justice
317 New Court House
Boston, MA 02108

Juliet Baird Alexander
132 Massapoag Avenue
Sharon, MA 02067

David Rome, Esq.
44 School Street
Boston, MA 02108

SUP-3157, SUPL-2414
Commonwealth of Massachusetts

Gentlemen and Ms. Robinson:

Please be advised that the

Commission, Commissioners Maria C. Walsh and Elizabeth K. Boyer participating, have granted the request for reconsideration filed by the Charging Party, but upon reconsideration decided to affirm the prior dismissal for the reasons previously stated. The Commission notes, however, that it inaccurately referenced a "Union meeting in the fall of 1987." Charging Party has objected to that statement. It appears that the reference should have been not to a Union meeting in the fall of 1987, but rather to the evidence that established that the Union, in the fall of 1987, informed the court reporters that the Union had decided to demand bargaining before any permanent CAT equipment was installed. The Charging Party lists other objections to the Commission's dismissal letter but Charging Party's submission is insufficient to establish probable cause to believe that the Law has been violated,

as alleged. Accordingly, for the reasons stated in the prior dismissal letter, the Commission declines to proceed to complaint and the charge is dismissed.

Very truly yours,
LABOR RELATIONS COMMISSION

Ann Moriarty
Executive Secretary

AM/ppw

Pursuant to the Supreme Judicial Court's decision in Quincy City Hospital v. Labor Relations Commission, 400 Mass. 745 (1987), this determination is a final order within the meaning of G.L.c.150E, Section 11. Any party aggrieved by a final order of the Commission may institute proceedings for judicial review in the Appeals Court pursuant to G.L.c.150E, Section 11. To claim such an

appeal, the appealing party must file a Notice of Appeal with the Labor Relations Commission within thirty (30) days of receipt of this decision. No Notice of Appeal need be filed with the Appeals Court.

COMMONWEALTH OF MASSACHUSETTS

In the Matter of:

JULIET BAIRD ALEXANDER Court of Appeals

V. No. A.C. 88 p-646

Labor Relations

Commission

AFFIDAVIT OF

JULIET BAIRD ALEXANDER

I, Juliet Baird Alexander, do hereby swear and affirm the following:

In August of 1987 and, again, in October of 1987, I had telephone conversations with the Officer of the Day and with Anne Moriarty, Secretary of the Labor Relations Commission. During these telephone conversations, I made the following three requests:

1) I requested permission to have a stenographer present, at my own expense,

at the hearing in order to take down the record of the proceedings. This request was denied.

2) I requested permission to bring a tape recorder, at my own expense, to provide a tape record of the proceedings. This request was denied.

3) I requested permission to have a fellow reporter present at the hearing to observe the proceedings. This request was denied.

Signed and sworn to under the pains and penalties of perjury this
day of November, 1988.

Signed before me this 15th day of November, 1988.

_____ _____

NOTARY PUBLIC Juliet B. Alexander

COMMONWEALTH OF MASSACHUSETTS

LABOR RELATIONS COMMISSION

LIST OF DOCUMENTS CONSTITUTING

ADMINISTRATIVE RECORD NO. SUP 3157

DATE	NO.	
8/11/87	1	Charge filed by Juliet Alexander (A Case Consolidated with SUPL-2412. See SUPL-2414 for continuation of list of documents constituting administrative record)

A true copy

ATTEST

_____

Ann Moriarty

Executive Secretary

LIST OF DOCUMENTS CONSTITUTING

ADMINISTRATIVE RECORD NO. SUPL-2414

DATE	NO.	
8/11/87	1	Charge filed by Juliet B. Alexander
11/9/87	2-18	Documents marked 1-15 (including 4b and 11a) presented at investigation by J. Alexander
11/9/87	19	Affidavits of Juliet Alexander with attachments A-E
11/19/87	20	Additional affidavits (4pp) of Juliet Alexander
11/9/87	21	Affidavits of Carol Tinkham (2pp)
11/9/87	22	Summary statement filed by Juliet Alexander
11/9/87	23	Documents marked 1 presented at

		investigation by O.P.E.I.U., Local 6
11/13/87	24	Letter of position filed by O.P.E.I.U., Local 6
11/13/87	25	Affidavit of Wayne Sawyer filed by O.P.E.I.U., Local 6
11/13/87	26	Affidavit of Gail Farrish filed by O.P.E.I.U., Local 6
1/4/88	27	Supplemental affidavit of Gail Farrish filed by O.P.E.I.U., Local 6
1/25/88	28	Dismissal letter issued by Commission
2/5/88	29	Request for review filed by Juliet Alexander
2/11/88	30	Letter from O.P.E.I.U., Local 6 filed
4/4/88	31	Affirmance of dismissal issued by Commission
4/27/88	32	Notice of appeal filed by

Juliet Alexander

6/3/88 Record assembled. Notices sent to Juliet Alexander, Ilene Robinson and David Rome. Notice under Appellate Rule 9(d) mailed to Clerk, Appeals Court, along with two (2) certified copies of docket entries.

A true copy

ATTEST

_____

Ann Moriarty

Executive Secretary

EXCERPTS FROM THE COLLECTIVELY BARGAINED AGREEMENT BETWEEN OPEIU LOCAL 6 AND THE ADMINISTRATIVE CHIEF JUSTICE OF THE TRIAL COURT, ADMINISTRATIVE RECORD #19, (EXHIBIT B)

Section 1.01. The Chief Administrative Justice recognizes the OPEIU, AFL-CIO Local 6 as the exclusive bargaining representative of all non-professional staff and clerical employees.

Section 17.02. The regular work week of full-time employees is 37 1/2 hours, normally consisting of five days of 7 1/2 hours per day occurring between the hours of 7 AM and 5 PM, depending upon Court hours and the needs of a particular Court/department as determined by the employer.

Nothing in this article is intended to

limit the authority of the Administrative Justice in determining court hours and employees shall work the hours needed or required by the operational needs of a particular court.

Section 17.03. An employee who is subject to the overtime provisions of the Fair Labor Standards Act as amended, (FSLA) will receive compensatory time off in lieu of pay for overtime actually worked after April 15, 1986.

The immediate manager is responsible for the maintaining of records necessary to administer the provisions of this article and the FSLA.

Section 17.03(A)
Accrued compensatory time resulting from overtime work performed prior to April 15, 1986, is not subject to the provisions of

the FSLA.

EXCERPTS FROM RULES AND REGULATIONS GOVERNING SUPERIOR COURT REPORTERS, ADMINISTRATIVE RECORD #19, (EXHIBIT A)

Each reporter shall be entitled to retain the fees collected for transcripts, but all supplies and equipment shall be furnished by the reporter at his own expense.

It is the duty of court reporters to take verbatim all that is said during every court proceeding, including reference to all exhibits, and, when a transcript is ordered, to accurately transcribe what was said.

Every court reporter shall furnish the Chief Justice on or before

January 15th of each year with a report relating to his employment, transcripts and charges therefore for the previous calendar year.

. . .

Whenever a transcript has not been completed within thirty (30) days from the date it was ordered, the Chief Justice may relieve a court reporter of his assignment and provide a substitute at the reporter's expense until such time as the transcript is completed.

Every court reporter shall be paid for furnishing a transcript of his notes of any proceeding in the trial of a case or any part thereof, according to the rates provided by statute.

No court reporter shall receive any gratuity or compensation in excess of that

provided for by statute from any person for any transcript of his notes.

All stenotype tapes, tape recordings and original shorthand notebooks containing any notes of the trial or hearing of a case shall be the property of the court.

EXCERPTS FROM AFFIDAVIT OF GAIL FARRISH (SUBMITTED TO COMMISSION BY OPEIU, LOCAL 6) ADMINISTRATIVE RECORD #26

I, Gail Farrish, do hereby depose and say:

(1) I was the Chairperson of the Massachusetts Superior Court Reporters Association (MSCRA) for two (2) years prior to May of 1987, and at all times material to this case.

(3) In the fall of 1986, at least a month

before the regularly scheduled meeting of the MSCRA, which was scheduled for October 31st in Westboro, I was informed by Mary Jane Moreau, an attorney working in the office of the Chief Administrative Justice, the Employer, that the Trial Court was willing to purchase a number of computer-assisted transcription systems (CAT) for the use of permanent court reporters. As a result of learning this, I brought the letter which I had received from Mary Jane Moreau to the attention of the membership of the association (a copy of this letter is attached as Exhibit #1 dated October 17, 1986) and recommended to the group that we form a committee to meet with management and to prepare proposals for the introduction of CAT equipment into the system.

(4) At the (MSCRA) membership meeting a committee was formed.

(6) Prior to January 1, 1987, the

committee formed at the October 31st meeting, was in telephone communication and there was at least one meeting with management.

(14) At our meeting (3/14/87) it was voted that the Superior Court should not provide individuals with computers to aid in the preparation of transcripts. I communicated the Association's views on this to Henry Bar, the Administrator of the Courts, by letter of March 19, 1987, a copy of which is attached to this affidavit as Exhibit #3.

Signed and sworn to under the pains and penalties of perjury, this twelfth day of November, 1987.

GAIL FARRISH

EXCERPT FROM ADMINISTRATIVE RECORD #12

(EXHIBIT 11/A)

The case reported was of approximately three hours duration. The time consumed in transcription was as follows:

(1) Shorthand 10-12 hours

(2) Stenograph 9-10 hours

(3) Open Mike 17-18 hours

(4) Stenomask 9-10 hours

EXCERPT FROM ADMINISTRATIVE RECORD #13

(EXHIBIT #12)

On this day Sawyer had completed three hours in Court. He hooked up his machine (called a stenoram) into the mainframe and "dumped" his Court notes into the mainframe which translated the notes. The process took only several minutes for the mainframe to translate Sawyer's notes.

After editing, the mainframe prints a clean copy of the transcript.

EXCERPTS FROM STATEMENT OF PROCEEDINGS PAGES 75 THROUGH 79 OF ALEXANDER'S RECORD APPENDIX SUBMITTED TO THE SUPREME JUDICIAL COURT

At the informal hearing held by the Massachusetts Labor Relations Commission at 100 Cambridge Street, Boston, Massachusetts, on November 9, 1987, the following people were present: Juliet Alexander, pro se; David Rome, Esq., for the Union; Ilene Robinson, Esq., for the Trial Court; Ms. Judy Neumann, Hearing Officer for the Labor Relations Commission; Phyllis Day, Business Agent for O.P.E.I.U.; Wayne Sawyer, Chief Union Steward; Greg Baler, Assistant Administrative Secretary to the Chief

Justice.

The following is an account of the pertinent oral testimony given by witnesses and statements by counsel as they occurred during the course of the 2 1/2 hour hearing to the best of Alexander's recollection.

By Alexander:

Official Reporters are a coherent, homogenous group of employees of the Trial Court who share a common supervision, similar work environment, job duties, assignments, hours worked and compensation.

Official reporters are all members of the same bargaining unit of O.P.E.I.U., Local 6.

Many official reporters work an estimated average of 20-30 hours a week at home producing transcripts ordered by the Trial Court.

Court reporters, including official court

reporters are considered, inappropriately, vendors or independent contractors with regard to any transcript production and are paid a statutory page rate per page of transcript produced. This payment is made through a voucher system of payment.

Official reporters have never been allowed to claim overtime compensation as provided by the Union contract because of this supposed vendor status.

Official reporters who have access to the CAT equipment, which is the subject of the complaint, are able to produce all of their transcripts completely within the 37 1/2 hour work week described in the Union contract.

These same reporters no longer have to expend their own monies to provide for equipment either to take down the record in court or to produce it in transcript form as required by the Rules and Regulations Governing Court Reporters of

the Superior Court.

These same reporters no longer have to expend their own monies to provide for the supplies necessary to produce transcripts.

These same reporters are paid the statutory page-rate for every page of transcript that is produced on CAT equipment.

Two fall and spring conferences each year are sponsored by the Office of the Administrative Chief Justice and the Massachusetts Superior Court Reporters Association, (MSCRA)

Official reporters are given the day off with pay to attend these meetings.

Attendance at these meetings is not limited to official reporters, but includes non-employee reporters as well as interested observers.

MSCRA holds its meetings at these conferences.

All votes pertinent to these charges were

taken by a show of hands without distinguishing who was an employee and who was not.

All official reporters who are members of the O.P.E.I.U., Local 6 bargaining unit are not all members of the MSCRA.

By Phyllis Day: (O.P.E.I.U. Business Agent)

Question: (By Ms. Neumann) When did you first become aware of the so-called pilot project which consisted of setting up CAT equipment for three reporters in Plymouth County?

Answer: (By Ms. Day) When I received Alexander's letter in July.